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**ADDITIONAL WORK UNDER THE CONSENT
AGREEMENT - OPERABLE UNIT 5 - DISPUTE
RESOLUTION**

5-15-91

DOE/USEPA

DOE-1357-91

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LETTER

OU5



Department of Energy

Fernald Site Office
P.O. Box 398705
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MAY 15 1991

DOE-1357-91

Ms. Catherine McCord
Remedial Project Director
U. S. Environmental Protection Agency
Region V, 5HR-12
230 South Dearborn Street
Chicago, Illinois 60604

Dear Ms. McCord:

**ADDITIONAL WORK UNDER THE CONSENT AGREEMENT - OPERABLE UNIT 5 - DISPUTE
RESOLUTION**

- References:
- 1) Letter, DOE-875-91, J. R. Craig to C. A. McCord, "Additional Work Under the Consent Agreement - Operable Unit 5," dated March 13, 1991
 - 2) Letter, DOE-1078-91, J. R. Craig to C. A. McCord, "Extension of Milestones - Remedial Investigation Reports for OU3 and OU5," dated April 5, 1991
 - 3) Letter, C. A. McCord to J. R. Craig, "OU3 and OU5 Extension Request, Fernald, Ohio," dated April 15, 1991

On March 13, 1991, the Department of Energy (DOE) notified the United States Environmental Protection Agency (U.S. EPA) (reference 1) of additional work under Operable Unit 5, that will adversely impact the scheduled work under the CERCLA Consent Agreement. The notification was done under the provisions stipulated in Section XV.

On April 5, 1991, DOE requested an extension under Section XVIII of the Consent Agreement to the milestone for submittal of the RI report based on the identification of the need for additional work for OU5, (reference 2). U.S. EPA denied U.S. DOE's request for extension in their April 15, 1991, letter (reference 3). Furthermore, U.S. EPA stated that the additional work identified in reference 1 was contemplated by the scope of the 1990 Consent Agreement.

The Consent Agreement negotiation period ended on April 30, 1990, with the Consent Agreement becoming effective in June 1990. The additional scope identified in the March 13, 1991 letter was not identified until August 1990, well after the Consent Agreement was negotiated. Therefore, the additional work could not be deemed to have been contemplated in the context of the 1990 Consent Agreement.

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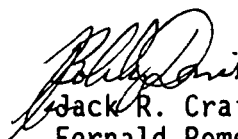
FERNALD'S MAIN PRIORITY IS CLEANUP

It was our belief that the identification of the additional scope of work and approval of it by U.S. EPA would automatically indicate that a schedule extension would be necessary. This was implied by our statement in the work plan addendum that the work effort would require a full year's sampling effort. This one year effort would put the Remedial Investigation Report milestone well beyond the April 8, 1991, originally scheduled date.

Based on the above information, DOE is invoking Dispute Resolution under Section XIV of the 1990 Consent Agreement. DOE disputes U.S. EPA's determination that the scope of work in question is not additional work and the associated disapproval of the schedule extension request.

If your staff has any questions, please ask them to contact Carlos Fermaintt at FTS 774-6157.

Sincerely,



Jack R. Craig
Fernald Remediation Action
Project Director

FSO:Fermaintt

cc:

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